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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,282	04/04/2006	David A. Jarus	1200323N US	6688

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POLYONE CORPORATION
33587 WALKER ROAD
AVON LAKE, OH 44012

EXAMINER

NILAND, PATRICK DENNIS

ART UNIT	PAPER NUMBER
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1714

MAIL DATE	DELIVERY MODE
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07/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/595,282

Applicant(s)

JARUS ET AL.

Examiner

Patrick D. Niland

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 4/5/07
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

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1. The amendment of 4/5/07 has been entered. Claims 1-20 are pending.

2. Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

A. There is not basis in the originally filed specification for the newly recited range of "at least about 8 weight percent". Particularly, there is not basis for the newly recited endpoint of "about 8 weight percent". The applicant's argued basis is noted but does not support the claimed language.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat.

Application Publication No. 2002/0156171 A1 Drewniak et al..

Drewniak discloses the instantly claimed compounds, articles, and methods at the abstract; sections [0002], [0008], [0015]-[0024], which encompasses the instantly claimed amounts of

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ingredients of claims 1, 4, 8, 14, and 16 and the modified polyolefin falls within the scope of the instantly claimed “compatibilizing dispersion agent” since it performs that function, [0025]-[0026], [0034]-[0042], [0043]-[0045], which encompasses the instantly claimed nanoclays, [0048]-[0065], which encompasses the instantly claimed method steps of claims 5, 10, and 11 and sections [0048]-[0049], [0051]-[0052] further encompass the instantly claimed amounts, [0053] encompasses the additives of the instant claims 3, 12, and 13, [0077], [0087], [0089], [0090], of which the examples use amounts falling within the scope of the instant claims, [0092], [0093], [0095], of which the examples use amounts falling within the scope of the instant claims, [0097] of which the polyethylene octene falls within the scope of the elastomer of the instant claims 2 and 17, [0098]-[0114], the claims, and the remainder of the document. Pellets of the instant claim 9 are disclosed at section [0064].

The reference is not limited to its examples. There is not basis for the applicant’s argument that the reference must prove each of its disclosed embodiments works and not basis is seen to suspect that the upper range of clay, e.g. 10% with the lower range of functionalized polyolefin, e.g. 2% up to the amount that gives greater than 3.1:1, e.g. 3.226%. See sections [0023]-[0024] and the other sections cited above. Given the upper range of clay useful according to the reference, 10% seems rather low as does 3.1% where only 1% of the functionalized polyolefin is used. The applicant’s representatives statements that making a 102 and 103 rejection is evidence of a deficiency in the 102 rejection is not persuasive. Anticipation is considered the ultimate in obviousness such that it is always permissible to make the 103 no matter how good the 102 rejection is and it is permissible in the law to give alternative theories of a situation without any alternative being taken as proving the other alternatives incorrect. Furthermore, it is opinion as

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to how much choosing can be done from a references teachings until it is no longer a 102 reference. Thus, the examiner always makes the 102 and 103. This rejection is therefore maintained.

6. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. Application Publication No. 2002/0156171 A1 Drewniak et al..

Drewniak discloses the instantly claimed compounds, articles, and methods at the abstract; sections [0002], [0008], [0015]-[0024], which encompasses the instantly claimed amounts of ingredients of claims 1, 4, 8, 14, and 16 and the modified polyolefin falls within the scope of the instantly claimed "compatibilizing dispersion agent" since it performs that function, [0025]-[0026], [0034]-[0042], [0043]-[0045], which encompasses the instantly claimed nanoclays, [0048]-[0065], which encompasses the instantly claimed method steps of claims 5, 10, and 11 and sections [0048]-[0049], [0051]-[0052] further encompass the instantly claimed amounts, [0053] encompasses the additives of the instant claims 3, 12, and 13, [0077], [0087], [0089], [0090], of which the examples use amounts falling within the scope of the instant claims, [0092], [0093], [0095], of which the examples use amounts falling within the scope of the instant claims, [0097] of which the polyethylene octene falls within the scope of the elastomer of the instant claims 2 and 17, [0098]-[0114], the claims, and the remainder of the document. Pellets of the instant claim 9 are disclosed at section [0064].

It would have at least been obvious to one of ordinary skill in the art at the time of the instant invention to use the instantly claimed ingredient combinations, amounts thereof, and processing steps in making the final articles because they are encompassed by the reference and would have been expected to give the properties and results disclosed by the reference.

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The reference is not limited to its examples. There is not basis for the applicant's argument that the reference must prove each of its disclosed embodiments works and not basis is seen to suspect that the upper range of clay, e.g. 10% with the lower range of functionalized polyolefin, e.g. 2% up to the amount that gives greater than 3.1:1, e.g. 3.226%. See sections [0023]-[0024] and the other sections cited above. Given the upper range of clay useful according to the reference, 10% seems rather low as does 3.1% where only 1% of the functionalized polyolefin is used. There is no showing of unexpected results commensurate in scope with the teachings of the cited prior art and the instant claims. This rejection is therefore maintained.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

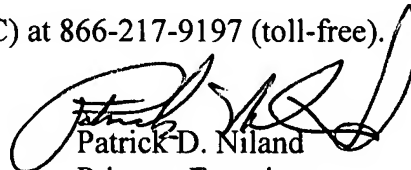
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick D. Niland whose telephone number is 571-272-1121. The examiner can normally be reached on Monday to Thursday from 10 to 5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Patrick D. Niland
Primary Examiner
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